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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/601,263	06/20/2003	Douglas R. Sedlacek	B02-026A	6730

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THE GATES CORPORATION
IP LAW DEPT. 10-A3
1551 WEWATTA STREET
DENVER, CO 80202

EXAMINER

LONEY, DONALD J

ART UNIT	PAPER NUMBER
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1772

DATE MAILED: 07/26/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/601,263

Applicant(s)

SEDLACEK, DOUGLAS R.

Examiner

Donald Loney

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 May 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-28 is/are pending in the application.
- 4a) Of the above claim(s) 1-7, 27 and 28 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 8-13, 16 and 18-26 is/are rejected.
- 7) ☒ Claim(s) 14, 15 and 17 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. Applicant is advised that should claim 8, 10-13, 16 and 18 be found allowable, claims 19-26 will be objected to under 37 CFR 1.75 as being a substantial duplicate thereof. When two claims in an application are duplicates or else are so close in content that they both cover the same thing, despite a slight difference in wording, it is proper after allowing one claim to object to the other as being a substantial duplicate of the allowed claim. See MPEP § 706.03(k).

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 8 and 19 are rejected under 35 U.S.C. 102(b) as being anticipated by Tomiyama et al (5714024) as presented in the last office action, mailed April 21, 2005.

Tomiyama et al discloses a marking material 10 containing a substrate layer 14 which is formed of thermoplastic material (i.e. polyester or polyamide as used by the applicant) applied to the exposed rubber surface of a belt. The belt also has tensile members 34. Refer to figures 1 and 4 along with column 3, lines 15-18, column 4, lines 30-44 and column 5, lines 58-64.

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4. Claim 8, 9 and 19 are rejected under 35 U.S.C. 102(b) as being anticipated by WO 00/58191 to Lofgren et al as presented in the last office action, mailed April 21, 2005.

Lofgren et al teaches a belt containing a rubber layer (i.e. elastomer body) 2, a tensile member 6 and a thermoplastic layer 8 thereon. The thermoplastic layer would be optically distinguishable from the elastomer body due to the fact it is a separate layer and is distinguishable in the figures therefrom. Refer to figures 1 along with page 2, line 25 through page 3, line 33. An additional layer of thermoplastic 9 is also disclosed. This rejection is made to specifically address the second thermoplastic layer in claim 9. The thermoplastic layers would be optically distinguishable from each other due to the fact they are separate layers and are distinguishable in the figures therefrom (or under a microscope).

5. Claims 8, 10, 11, 19-21, 24 and 26 are rejected under 35 U.S.C. 102(b) as being anticipated by Bierbaum (5244080) as presented in the last office action, mailed April 21, 2005.

Bierbaum teaches a belt containing a rubber layer (i.e. elastomer) 2, a tensile layer 4 and a plastic layer 3 there over. The plastic layer has a pattern of openings (e.g. lettering) that is of a different color than the elastomer body. Plastics are thermoplastic in nature. The examiner has included pages 455 and 586 of Grant and Hack's Chemical Dictionary to show the definitions of plastic as being moldable by heat (i.e. thermoplastic). Refer to figures 1 and column 2, lines 7-49, column 3, lines 41-67 and column 4, lines 17-61.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 12, 13, 16, 18, 22, 23 and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bierbaum in view of WO 00/58191 to Lofgren et al as presented in the last office action, mailed April 21, 2005.

The primary reference teaches the invention substantially as recited except for the specific materials used for the elastomers and thermoplastic materials. Bierbaum does generically teach that elastomers and plastics are used. See 35 USC 102 rejection above.

Lofgren et al teaches the specific thermoplastic (i.e. polyethylene) and rubbers (SBR, EPDM) are used in the formation of belt bodies and layers applied thereto. Refer to page 2, lines 30-32 and page 3, lines 22-27.

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to Bierbaum to use the specific materials, as taught by Lofgren et al, to form the body and layer thereon motivated by the fact that Bierbaum teaches that rubbers and plastics are generically used for these sections of the belt. Lofgren et al also discloses it is known for drive belts to contain teeth which provide enhanced gripping of the belt.

Response to Arguments

Applicant's arguments filed May 10, 2005 have been fully considered but they are not persuasive. The applicant argues that Tomiyama et al, Lofgren et al and Bierbaum all fail to teach a thermoplastic layer attached to the body of the belt that is optically distinguishable from the body. However, the applicant has not distinguished any particular part of the body of the belt, in reference to the prior art, that would distinguish from the prior art showing the thermoplastic layer on the belt. The body of all the prior art belts is elastomeric. Tomiyama et al shows the thermoplastic layer 14 and mark 16 on the body of the belt in figure 4 or 5. The examiner deems the layer 14 as distinguishable due to the fact it has marking 16 thereon. Lofgren et al shows thermoplastic layer 9, which is on the belt. The thermoplastic layers in the references all would be optically distinguishable from each other due to the fact they are separate layers and are distinguishable in the figures therefrom (or under a microscope). The thermoplastic layer 3 in Bierbaum would additionally be distinguishable from the body due to the fact it has cut-outs 5 therein. These cut-outs would structurally distinguish layer 3 from body 2.

Allowable Subject Matter

8. Claims 14, 15 and 17 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims as indicated in the last office action, mailed April 21, 20.

9. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

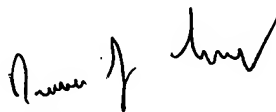
A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Donald Loney whose telephone number is (571) 272-1493. The examiner can normally be reached on Mon, Tues, Thurs and Fri. 8AM-4PM, flex schedule.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Pyon can be reached on 571 272-1498. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Donald Loney
Primary Examiner
Art Unit 1772

DJL:D.Loney
07/22/05